IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 11.1.2007

State of Haryana

...Appellant

versus

Rohtas and others

... Respondents

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.
Hon'ble Mr.Justice A.N.Jindal.

Present: Mr.Tarun Vashisht, Addl.AG, Haryana.
Mr.R.K.Dahiya, Advocate
for the respondents.

UMA NATH SINGH, J.

This Crl. Appeal by the State arises out of a judgment and order dated 3.8.1993 passed by learned Addl. Sessions Judge, Sonepat, in Sessions Case No.44 of 1989 (ST No.3 of 1990), acquitting the accused respondents of the charges under Sections 304-B and 498-A IPC for dowry death of and cruelty to deceased Indro, said to be aged 20, during 7 years of her marriage.

Vide the FIR (Ex.PC/2), which was recorded on the statement of Jiwan (PW1), father of the deceased, his daughter deceased Smt.Indro was married to Rohtas (respondent No.1) son of Dharam Pal (respondent No.2), about a year before the date of incident. He had given dowry articles in her marriage exceeding his capacity. But the deceased was taunted for bringing insufficient dowry and was often times reminded of her poor family status. The complainant tried to persuade his son-in-law (respondent No.1), while stating that he could hardly afford any further dowry. Even then, he was forced to sell his house to give a sum of Rs.10,000/- to settled

his son-in-law in some business, who was working as a Tailor Master. The harassment to the deceased did not stop there and on 4.7.1989, in the day time at about 1.00 PM, one Gopi Chand son of Nand Lal, resident of Mandora (the native place of the accused), and one Ram Kishan, at the instance of Dharam Pal (respondent No.2) came to the complainant's place and informed him of the death of his daughter due to consuming of some poisonous tablets and that her dead body had been cremated the same day in morning. The complainant made enquiries about the cause of death and he gathered a strong suspicion that the deceased was done to death after administering of poisonous tablets by her husband, father-in-law, husband's elder brother, and mother-in-law, for the dead body was cremated without giving information to him. He being accompanied by his brother Ram Pal, one Fateh Chand, Maha Singh, Khasa Ram and Ashok Kumar, came to Panipat for reporting the matter to the Police. SI/SHO of Police Station Kharkhoda, Inder Lal (PW6), recorded the statement of the complainant (PW1), while being on patrolling duty at Rohtak Chowk, Kharkhoda. From the statement of the complainant, as the offences under Sections 304-B, 201 and 498-A IPC were made out, the SI sent a ruqa for recording of a formal FIR with directions to send the copies thereof to higher police officers. He then proceeded to the spot of incident in a Government vehicle. Accused Rohtas, Rajbir and Brahmi were arrested on 6.7.1989, and accused Dharam Pal on 8.7.1989. After completion of investigation, the police laid a challan against the accused, who were later on tried upon the charges under Section 304-B IPC and Section 498-A IPC. The prosecution examined as many as 6 witnesses. The father of the deceased, Jiwan (PW1) is the complainant. Suresh (PW2) has been produced to prove that PW1 had sold his house to

him so that he could give the amount of Rs.10,000/- out of the sale proceed to his son-in-law for doing his business. Fateh Singh (PW3) is a neighbourer and appears to be a village elder. HC Bhim Singh (PW4) had recorded the formal FIR (Ex.PC/2) on receipt of ruqa (Ex.PC), bearing endorsement (Ex.PC/1) of the SI/SHO Inder Lal. He sent the copies of the FIR to the senior police officers and also to the Illaqa Judicial Magistrate the same night through a special messenger, which was delivered at his residence at 10.00 PM, after covering a distance of 19 kms. Nand Lal (PW5) is a qualified Draftsman, who prepared the site plan (Ex.PF) on 26.9.1989. SI Inder Lal (PW6) recorded the statement of the complainant vide Ext.PC and investigated the case.

In their statements under Section 313 Cr.P.C., the accused while denying the allegations have stated that the deceased was leading a happy married life and they had never ill treated her, much less on account of any dowry. According to him, the deceased was suffering from fits, as a result whereof, she died. They had informed her parents through accused Rajbir in time and she was cremated only in presence of the complainant (PW1) and his relatives in the village. They have denied demand of dowry and ill treatment of the deceased and claimed to be financially very sound. They alleged that the complainant party has manipulated the case to involve all the family members with a view to extort money. However, the trial Court did not find the testimonies of Jiwan (PW1), Suresh (PW2) and Fateh Singh (PW3) sufficient enough to prove the guilt of the accused beyond reasonable doubt. The trial Court has noted that Gopi Chand and Ram Kishan who had informed the complainant (PW1) of the death of his daughter could have deposed the truth had they been produced in witness

box.

We have heard learned counsel for the parties and perused the record. Learned State counsel submitted that the circumstances like cremation of the deceased without intimation to the complainant side, sale of house by the complainant (PW1) to Suresh (PW2) for meeting the demand of dowry by his son-in-law, and the recovery of broken pieces of bangles from the house of the accused showed that the deceased was physically assaulted and was done to death for dowry by administering poison.

On the other hand, learned counsel for the respondents contended that the deceased was suffering from attack of fits and she died of that only. According to him, the witnesses have made material improvements in their statements before the Court.

On a careful analysis of the testimonies of the witnesses, we are of the opinion that the impugned judgment of the trial Court qua accused Rohtas cannot endure. The very fact that the deceased was cremated in the morning without information to police to find out the apparent cause of death and her parents were informed thereafter at 1.00 PM in the day time, it appears that she met unnatural death inside her matrimonial house. Secondly, the complainant has attributed motive to the accused inasmuch as he could not meet their persistent demand of dowry. Thirdly, if the deceased was a patient of epilepsy/fits, the accused would have also placed on record the medical prescription of her treatments. In their statements under Section 313 Cr.P.C., the accused have admitted that they are financially well-to-do and the deceased was happily settled in her matrimonial home. In that background, they would have certainly got her proper medical treatments. Jiwan (PW.1), father of the deceased, has made

categorical allegations of demand of dowry and harassment pursuant thereto. Besides, he has also stated that accused Dharampal had confessed before him on being asked that they committed a mistake. Even the people around in the neighbourhood had told the complainant party that due to agonies and harassment, the deceased would have ended her life. She might have been forced to take fatal drug by the accused. In reply to a defence suggestion, the witness has stated that he had told the police that the accused used to taunt and torture his daughter on the grouse of inadequate dowry. He had also told the police that accused Rohtash in one of the visits to his house, had demanded Rs.10,000/- from him to settle himself in some business. He had given Rs.10,000/- to accused Rohtas after six months of the marriage. He has also stated that the accused had further demanded Rs.5,000/- from him to establish his brother Rajbir also, in some business. He has stated that Gopi Chand who had informed him about death of the deceased, was a resident of the native village of the accused, therefore, he was given up. He has clarified that the deceased had informed him of harassments at the hands of her in-laws for demand of dowry since her second visit only. He did not lodge a report with the authority or convened a Panchayat to settle the matter with the accused for his deceased daughter did not want to spoil the relations. He would only lodge protests with his son-in-law accused Rohtas. He has precisely stated that he sent his sister's son to his son-in-law and called him to his place and gave Rs.10,000/-. He has also given the details of dowry articles given in marriage to the accused. The complainant sold out his house constructed on a Wakf's land to meet the dowry demand of his son-in-law. This evidence is supported by Suresh (PW.2), purchaser of the house. PW.2 has stated that he purchased a small

house constructed over 15/20 sq.yards from PW1 for Rs.12,000/-. In his cross-examination, he has stated that he had obtained in writing a note from PW1 in one of his note books to show the sale of the property. PW2 has denied the defence suggestion that he did not purchase any house from PW1 for consideration. Simiarly, Fateh Singh (PW3), a fellow resident of complainant's locality, has supported his evidence in material particulars like: payment of Rs.10,000/- towards demand of dowry, harassment of the deceased by the accused, recovery of broken pieces of glass bangles from roof of the house of the accused, and recovery of ashes and bones of the deceased from the cremation ground by the Police. SI Inder Lal (PW6) has also supported the prosecution case: to the extent of recording of statement (Ex.PC) and sending it to the Police Station for recording of a formal FIR; recovery of ashes and bones from the cremation ground and broken pieces of glass bangles from the roof of the house of the accused, and also their arrests. Moreover, he has reiterated that he had correctly recorded the statements of Jiwan (PW1) and Fateh Singh (PW3) under Section 161 Cr.P.C.. In his cross-examinations, he replied that when he had visited the place of the accused, he had found accused Dharam Pal, Rajbir and Brahmi present in the house (but not accused Rohtas). Accused Rajbir had even accompanied him to the cremation ground. The FSL report (Ex.PH/1) also indicated that the bones and ashes collected by the SHO (approximately 1 kg.) belonged to a human being. Moreover, in their statements under Section 313 Cr.P.C., the accused have not denied the factum of death of the deceased inside their house so also their presence at that time. It is also not denied that the deceased did not die within 7 years of her marriage, and rather, the alleged occurrence took place just within 1-1/2 year of her

marriage with accused Rohtas. Out of two charges of offence, one is under Section 304-B IPC for dowry death. The provisions of Section, on reproduction, read as under:-

> "**304-B. Dowry death.-** (1) Where the death of a woman is caused by way of burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.
>
> Explanation.- For the purposes of this sub section, "dowry death" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).
>
> (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

From the aforesaid discussion of evidence, it appears that the deceased died otherwise than under normal circumstances within 7 years of her marriage. The statement of PW1, particularly with reference to his cross-examination, disclosed that the deceased was subjected to cruelty or harassment in connection with demand of dowry by her husband Rohtas, soon after the marriage. In her second visit itself to her native place, she had complained of harassment for dowry to the complainant. In that background, we are of the opinion that the deceased died a a dowry death. For the same reasons and evidence, the presumption as to dowry death

under Section 113-B of the Indian Evidence Act, 1872, would also apply. The said Section reads as under:-

> "**113-B. Presumption as to dowry death.-** When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.
>
> Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in Section 304B, of the Indian Penal Code (45 of 1860)."

As regards the second charge under Section 498-A IPC, since the deceased was subjected to cruelty by her husband with a view to coerce her or her father to meet unlawful demand of valuable security, like money in dowry, his acts would be covered under the provisions of Section 498-A IPC. Further, there are specific averments containing such allegations against Rohtas in the statements of the prosecution witnesses, as discussed hereinabove.

Under the circumstances, accused Rohtas is held guilty of offences under Sections 304-B IPC and 498-A(b) IPC.

So far as other accused persons are concerned, there is no specific allegation against them in the cross examinations of the complainant (PW1). From his evidence, it appears that accused Dharam Pal, father of accused Rohtas, was well placed in service, and all the three co-accused do not seem to be culpably connected with the offences charged with. Hence, they deserve to be given the benefits of doubt. The evidence of cremation without following the provisions of Section 174 Cr.P.C. cannot be used for holding them guilty under Section 201 IPC in the absence of a

charge to that effect as this offence cannot be said to be a minor one in the category of offence under Sections 304-B and 498-A IPC. Thus, the findings relating to three co-accused, namely, Dharam Pal, Rajbir and Brahmi, for the aforesaid discussions, do not call for any interference.

In the premises as hereinabove, the Criminal Appeal is allowed in part and only accused respondent Rohtas is convicted under Sections 304-B and 498-A IPC and looking to the nature of offences and the fact that accused Rohtas did not accede to repeated persuasions of his father-in-law, the complainant (PW1), to desist from persistent demand of dowry and to have peace with the deceased in their matrimonial home, he is sentenced to ten years' RI on the first count, and six months' RI on the second count. Both the sentences shall run concurrently. The Chief Judicial Magistrate concerned is directed to take accused Rohtas son of Dharam Pal into custody forthwith for undergoing the aforesaid jail sentences.

(UMA NATH SINGH)
JUDGE

11.1.2007 **(A.N.JINDAL)**
pk **JUDGE**